2014 IL App (5th) 130485WC-U
No. 5-13-0485WC
Order filed September 17, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SALLY LINVILLE,	)	Appeal from the Circuit Court
	)	of Jefferson County.
Appellant,	)	
	)	
v.	)	No. 13-MR-72
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, et al.,	)	Honorable
	)	Joe Harrison,
(Ikon Office Solutions, Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: Given conflicting medical opinion testimony and equivocal nature of treating physician's causation opinion, the Commission's finding that claimant's current condition of ill-being is not causally related to her employment is not against the manifest weight of the evidence. As such, the Commission's denial of workers' compensation benefits would be affirmed.

¶ 2 Claimant, Sally Linville, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq*. (West 2008)) alleging that she was injured

as a result of a fall sustained during her employment with respondent, Ikon Office Solutions. Following a hearing, the arbitrator denied compensation, finding that claimant failed to establish that her injury "arose out of" her employment or that her current condition of ill-being was causally related to the alleged work-related accident. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Jefferson County confirmed the decision of the Commission. Before this court, claimant challenges the Commission's findings on both accident and causation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing held on April 17, 2012. Claimant worked for respondent as a traveling salesperson. On April 16, 2008, claimant made a sales call to an elementary school in Carbondale. After exiting the school, claimant was walking on a sidewalk when she slipped off the edge of the path and fell. Claimant testified that she was wearing high heels at the time of the fall and that she was in a hurry to make it to her next sales call.

¶ 5 Claimant testified that she fell onto a grassy area adjacent to the sidewalk, twisting her ankle and landing on her left knee first and then her left side. Claimant sustained scrapes to her knee, elbows and arms, but was not bleeding. Claimant acknowledged that the sidewalk was not wet or icy and that it did not have any breaks or cracks. However, claimant testified that the height of the sidewalk was approximately 1½ inches above the grass. After the fall, claimant went home, but continued working that day by making telephone calls. Claimant contacted her sales manager to report the fall the day it occurred, but did not immediately seek medical treatment. Claimant denied any prior injuries to her left hip.

¶ 6 On April 24, 2008, claimant presented to Care First Medical Center (Care First) with complaints of seasonal allergies and sinus problems. The office note of that visit indicates that claimant's back and spine were normal. Claimant was diagnosed with an acute viral respiratory infection. Claimant received a steroid injection and was instructed to follow up in 10 days. Claimant continued to treat at Care First in May 2008 for continued sinus complaints and an abscess in her tooth. The records from Care First do not reflect any complaint of joint pain or a history of an accidental injury or a fall.

¶ 7 Claimant testified that she first started to notice pain in her left hip in December 2008. On February 16, 2009, claimant sought treatment with Dr. Julie Teel, a chiropractor. At that time, claimant reported pain in the low back and left pelvic region with an onset one month earlier. When Dr. Teel questioned claimant about a possible cause, claimant related that she fell on her left side six months earlier. Dr. Teel diagnosed low-back pain and hip pain. X rays of the left hip were taken and sent to a radiologist for review prior to the commencement of any treatment. The radiologist noted a lesion affecting the left femoral head and recommended an MRI to rule out fibrous dysplasia, chondroblastoma, or a bone cyst. An MRI of the left hip was taken on March 16, 2009, at Good Samaritan Regional Health Center (Good Samaritan). The MRI revealed edema throughout the femoral head and neck extending to the proximal shaft of the left femur, consistent with avascular necrosis. Dr. Teel advised claimant on March 17 regarding the findings and recommended an orthopaedic consult.

¶ 8 On March 26, 2009, claimant presented to the Orthopaedic Center of Southern Illinois, where she was seen by Dr. James Chow, an orthopaedic surgeon. Claimant reported a three-month history of significant left hip pain. Dr. Chow noted a history of oral steroid use for sinusitis and a "remote history" of having fallen. After a review of the diagnostic films, Dr.

Chow confirmed the diagnosis of avascular necrosis of the left hip. Dr. Chow recommended core decompression and bone grafting in an attempt to avoid hip-replacement surgery.

¶ 9 On April 10, 2009, claimant saw Dr. Don Kovalsky, Dr. Chow's colleague, due to Dr. Chow's unavailability. At that time, claimant provided a history of left hip pain. Claimant related that her symptoms started in April of 2008 when she fell at work, landing on her left side. Dr. Kovalsky's progress note indicates that claimant was seen by a physician and given a cortisone injection and started on oral steroids, but her pain persisted. The note also states that claimant was placed on steroids again in December 2008 due to sinus problems. Dr. Kovalsky concurred with Dr. Chow's surgical recommendation. On April 21, 2009, claimant underwent a core decompression of the left hip. Claimant continued to treat with Dr. Kovalsky post-operatively, and claimant was pleased with the surgical outcome. On May 8, 2009, Dr. Kovalsky authorized claimant to return to work on sedentary duty only. By October 2009, claimant had returned to work full time. Nevertheless, Dr. Kovalsky remained guarded about claimant's prognosis, noting that there could still be a collapse of the femoral head up to 18 months after surgery.

¶ 10 Claimant returned to Dr. Kovalsky's office on December 28, 2009. Claimant reported that on December 21, 2009, she was walking into a store when her left leg "locked up." Since that time, claimant had been experiencing intermittent pain. X rays revealed some irregularity at the left femoral head. An MRI of the left hip showed avascular necrosis of the left femoral head with mild collapse deformity and loss of articular congruity in the superior weight-bearing aspect of the femoral head. Dr. Kovalsky recommended continued monitoring of the hip, noting that if the femoral head continues to flatten and claimant's pain worsens, she will have no choice but to undergo a total hip arthroplasty. By January 2011, claimant advised that she wanted to pursue

the hip-replacement surgery as she continued to have pain and her condition restricted her activities. X rays taken on January 5, 2011, showed flattening of the femoral head with further consolidation. Following pre-surgical screening, Dr. Kovalsky performed the total left hip arthroplasty on February 7, 2011.

¶ 11 Claimant presented for post-operative evaluation on February 16, 2011. At that time, claimant was doing well and the incision was healing. Thereafter, claimant's condition continued to improve and she was released to light duty. On February 10, 2012, claimant returned to Dr. Kovalsky's office, noting that she was working full duty with no complaints of pain. At that time, claimant was instructed to return in a year for additional X rays, but was otherwise discharged from care.

¶ 12 Dr. Kovalsky testified by evidence deposition on November 9, 2010, that avascular necrosis is a loss of blood flow to bone. Dr. Kovalsky noted that the condition can be idiopathic, but that it can also be related to chronic steroid use, alcoholism, and trauma. Dr. Kovalsky explained that the development of avascular necrosis does not typically result in immediate pain. Rather, symptoms occur as the bone starts to die and is not replaced. Dr. Kovalsky estimated that it generally takes 8 to 12 months before avascular necrosis symptoms develop. Dr. Kovalsky opined that the time frame between claimant's fall in April 2008 and the onset of her symptoms in December 2008 was consistent with the development of avascular necrosis. Dr. Kovlasky further testified that, although it is not common, there are reported cases of avascular necrosis in people, such as claimant, who have experienced blunt trauma without fracture or dislocation. He stated that in his more than 25 years of practice, claimant is only the second case where he has seen avascular necrosis in a trauma without dislocation or fracture.

¶ 13 On cross-examination, Dr. Kovlasky testified that he was unaware of the specifics of claimant's fall other than that she slipped and landed on her left side. Dr. Kovlasky further testified that he has not reviewed the records from Care First and he was unaware when claimant first sought care for hip pain. It was his understanding that claimant had some minor pain related to the fall initially, for which she received a cortisone injection. The pain then subsided, but claimant developed symptoms of avascular necrosis in December 2008. Dr. Kovalsky stated that although steroid use can result in avascular necrosis, claimant's steroid use was mild, and the condition is not typically associated with a short "burst of steroids." Dr. Kovlasky admitted, however, that he is unaware of the steroid doses claimant was administered or the length of time she received them. Dr. Kovalsky further testified on cross-examination that it is "impossible" for him to tell whether claimant's fall or her steroid use "absolutely caused" the avascular necrosis.

¶ 14 On redirect examination, Dr. Kovalsky was asked whether he believes, within a reasonable degree of medical certainty, that claimant's fall was a contributing factor of her development of avascular necrosis. Dr. Kovalsky responded in the affirmative, reiterating that "the fact that the time frame of the injury is consistent with the event that would have caused this eight to 12 months later." On recross-examination, Dr. Kovalsky was asked for clarification on his causation opinion. Dr. Kovlasky responded that claimant does not have any "classic reason" to have avascular necrosis other than the fact that she has a history of hip trauma and low-dose steroid use in the correct time frame. Dr. Kovlasky elaborated that both the trauma and the steroid use "would be equally as likely" to cause avascular necrosis.

¶ 15 Respondent had claimant's medical records evaluated by Dr. Mitchell Sheinkop, a board-certified orthopaedic surgeon. Dr. Mitchell Sheinkop testified by evidence deposition on February 10, 2011. Dr. Sheinkop examined records from Care First, Dr. Teel, the Orthopaedic

Center of Southern Illinois, and Good Samaritan. Dr. Sheinkop noted that avascular necrosis falls into two categories—traumatic or atraumatic. Atraumatic causes include alcohol abuse, steroid use, and idiopathy, while traumatic causes include fracture and dislocation. Dr. Sheinkop further testified that a minimum one-year latency is necessary between a fracture or dislocation and the manifestation of avascular necrosis. Dr. Sheinkop noted that claimant's fall did not require any medical intervention, that it did not alter her functional capacity, and that she sustained "no impact and no disability" as a result of the fall. Given the absence of fracture, dislocation, or violence in claimant's fall, Dr. Sheinkop could not associate the trauma to claimant's avascular necrosis. Dr. Sheinkop acknowledged claimant's steroid use for sinusitis, but determined that it was "not in any quantity that scientifically can be related to causation of avascular necrosis." Ultimately, Dr. Sheinkop opined that the cause of claimant's avascular necrosis was idiopathic.

¶ 16 On cross-examination, Dr. Sheinkop testified that he did not review Dr. Kovalsky's deposition. He also acknowledged that he did not personally examine claimant. With respect to his testimony that claimant's fall was "no impact," Dr. Sheinkop admitted that the written records do not contain a "real good history" of the fall and that he did not talk to claimant to ascertain the "violence" or "impact" of the fall.

¶ 17 Respondent also submitted claimant's medical records to Dr. Jerrold Leikin, a toxicologist at Northshore University Health System. Dr. Leikin opined that there was no correlation between claimant's steroid use and her avascular necrosis. According to Dr. Leikin, steroid use would require regular administration of unusually high does to result in steroid-induced osteonecrosis.

¶ 18 Based on the foregoing evidence, the arbitrator denied benefits. Initially, the arbitrator found a lack of credible evidence as to the circumstances related to the alleged accident. The arbitrator noted that claimant did not seek any medical attention for the accident at the time it occurred or at any time temporally proximate to it, and she did not mention the accident to her treating physician when she was seen for other issues several times within a month of the alleged fall. Assuming that the accident did occur consistent with claimant's relation of the events, the arbitrator concluded that claimant failed to establish that the accident "arose out of" her employment. The arbitrator noted that claimant would be considered a traveling employee, and, as such, the burden of proof is relaxed. Nevertheless, the court, relying on *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52 (1989), determined that claimant failed to establish that the area in which she tripped was in any way defective or hazardous or that claimant was exposed to an increased risk of harm.

¶ 19 The arbitrator also concluded that claimant failed to establish that her current condition of ill-being is causally related to her employment. In so finding, the arbitrator adopted the opinion of Dr. Sheinkop over that of Dr. Kovalsky. The arbitrator found that Dr. Kovalsky's opinion was based on an incomplete and inaccurate description of claimant's accident history. The arbitrator noted, for instance, that Dr. Kovalsky believed that claimant had sought medical care for the hip injury, and that the steroid injection was administered for that condition, even though this interpretation is not supported by the medical documentation. The arbitrator found that the medical records reviewed by Dr. Sheinkop were more thorough and provided a greater foundation for his opinion.

¶ 20 The Commission affirmed and adopted the decision of the arbitrator. Thereafter, the circuit court of Jefferson County confirmed the decision of the Commission. This timely appeal by claimant followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, claimant raises two issues. First, she argues that the Commission's finding that her accident did not "arise out of" her employment is against the manifest weight of the evidence. Second, she contends that the Commission's finding that her current condition of ill-being is not related to her fall in April 2008 is against the manifest weight of the evidence. We do not address the Commission's finding that claimant failed to establish a work-related accident, for even if claimant sustained her burden on that issue, we cannot conclude that the Commission's finding on causation is against the manifest weight of the evidence.

¶ 23 An employee seeking workers' compensation benefits has the burden of proving all elements of her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Among other things, the employee must establish a causal connection between the employment and the injury for which she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Causation presents an issue of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not substitute

its judgment for that of the Commission on such issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 17.

¶ 24 In this case, the medical evidence clearly establishes that claimant developed avascular necrosis. The issue in dispute concerns the cause of the condition. The Commission was presented with two causation opinions, one from Dr. Kovlasky, claimant's treating physician, and one from Dr. Sheinkop, respondent's retained expert. Both physicians agreed that there are multiple causes for avascular necrosis, including trauma, steroid use, and idiopathy. Both physicians also agreed that there is a latency between the occurrence of a traumatic event and the manifestation of avascular necrosis symptoms. Dr. Kovalsky, citing the time frame between the April 2008 fall and the development of symptoms of avascular necrosis in December 2008, opined that the fall caused the condition. In contrast, Dr. Sheinkop, noting the absence of any fracture or dislocation as a result of the fall, opined that claimant's condition was idiopathic. Ultimately, the Commission, in affirming and adopting the decision of the arbitrator, credited the opinion of Dr. Sheinkop over that of Dr. Kovalsky. Claimant insists that the Commission's conclusion was erroneous. According to claimant, the Commission cited only one inaccuracy in Dr. Kovalsky's testimony, and this was insufficient to discredit him and give more weight to Dr. Sheinkop's opinion. We disagree.

¶ 25 As noted above, the Commission was presented with conflicting medical opinions regarding the cause of claimant's avascular necrosis. The Commission credited Dr. Sheinkop's

opinion over that of Dr. Kovalsky on the grounds that Dr. Kovalsky's opinion was based upon an incomplete and inaccurate description of claimant's accident history and that the medical records reviewed by Dr. Sheinkop provided a greater foundation for his opinion. The record before us supports the Commission's findings. Notably, it was Dr. Kovalsky's understanding that shortly after the fall, claimant sought medical care for a hip injury and that she received a steroid injection for the injury. However, the record clearly shows that claimant never sought treatment for any injury to her hip proximate to the time of the fall. Moreover, although claimant was administered a steroid injection shortly after the fall, it was for her sinus problems. While claimant does not find this inaccuracy significant, it is the function of the Commission, not the claimant, to resolve factual matters, including the weight to be accorded the evidence. *Hosteny*, 397 Ill. App. 3d at 674.

¶ 26 Even if we were to ignore this inaccuracy, we would still affirm the decision of the Commission. In this regard, we note that Dr. Kovalsky's opinion that claimant's avascular necrosis developed as a result of the April 2008 fall was equivocal. On direct examination, he testified that the time frame between the trauma resulting from the April 2008 fall and the onset of claimant's symptoms was consistent with the development of avascular necrosis. However, he also acknowledged that claimant was administered steroids around the time that she fell. On cross-examination, Dr. Kovalsky testified that it is "impossible" for him to tell whether claimant's fall or her use of steroids "absolutely caused" the avascular necrosis and he conceded that either the trauma or the steroid use "would be equally likely" to cause the condition.

¶ 27 In short, given the conflicting medical opinion testimony and the equivocal nature of Dr. Kovalsky's causation opinion, and in light of the Commission's role in resolving factual

disputes, we cannot say that the Commission's finding that claimant's avascular necrosis is not causally related to the April 2008 fall is against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we affirm the judgment of the circuit court of Jefferson County, which confirmed the decision of the Commission.

¶ 30 Affirmed.